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RECORDATION NO. .... Filed 1425

NOV 16 1978 - 25 PM  
WASHINGTON  
NEW YORK  
HARRISBURG

MORGAN, LEWIS & BOCKIUS

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9841  
RECORDATION NO. .... Filed 1425

NOV 16 1978 - 25 PM  
LOS ANGELES  
MIAMI

9841  
RECORDATION NO. .... Filed 1425

NOV 16 1978 - 25 PM November 15, 1978

INTERSTATE COMMERCE COMMISSION

Robert L. Oswald, Secretary  
Interstate Commerce Commission  
12th and Constitution Avenues  
Washington, DC 20423

9841  
RECORDATION NO. .... Filed 1425

NOV 16 1978 - 25 PM

INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

Dear Mr. Oswald:

In accordance with Section 20c of the Interstate Commerce Act and the regulations of the Interstate Commerce Commission thereunder the following documents are herewith presented for recordation:

1. Conditional Sale Agreement, dated as of October 31, 1978.

Vendor: Whittaker Corporation  
(Berwick Forge and Fabricating Division)  
P. O. Box 188  
West Ninth Street  
Berwick, PA 18603

Purchaser: Hillman Manufacturing Company  
P. O. Box 510  
Brownsville, PA 15417

Guarantor: Wilmington Securities, Inc.  
One Customs House Square  
Wilmington, DE 19801

2. Management Agreement (in the nature of a lease or bailment), dated as of October 31, 1978.

Owner (lessor):  
(bailor): Hillman Manufacturing Company

Manager (lessee):  
(bailee): Detroit and Mackinac Railway Company  
120 Oak Street  
Tawas City, MI 48763

3. Management Agreement Assignment, dated as of October 31, 1978.

Assignor: Hillman Manufacturing Company

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I.C.C.  
OPERATION BR.

Angela M. Oswald  
C. Oswald

MORGAN, LEWIS & BOCKIUS

Robert L. Oswald, Secretary

-2-

November 15, 1978

Assignee: The Provident Bank, Cincinnati,  
Ohio, as Agent  
108 East Fourth Street  
Cincinnati, OH 45202

4. Agreement and Assignment, dated as of October 31,  
1978.

Assignor: Whittaker Corporation  
(Berwick Forge and Fabricating Division)

Assignee: The Provident Bank, Cincinnati,  
Ohio, as Agent

A general description of the Equipment covered by these  
documents is as follows:

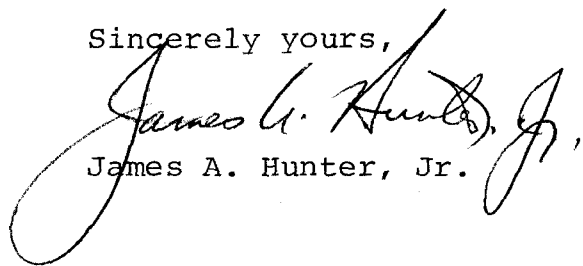
<u>Type</u>	<u>A.A.R. Mechanical Designation</u>	<u>Number of Units</u>	<u>Marked</u>	<u>Numbers Inclusive</u>
70 Ton, 50'-6" General Purpose Boxcars	"XM"	250	Detroit & Mackinac Railway	DM10001- DM10250

Enclosed is our check in payment of the recordation  
fee. To the best of my knowledge the enclosed documents have not  
previously been filed with the Interstate Commerce Commission.

This firm is acting as special Pennsylvania counsel  
for the Vendor in connection with this transaction. After re-  
cording a counterpart original of these documents, please return  
the remaining copies, stamped with your recordation number, to  
the individual bearing this letter and presenting them for  
recordation.

Thank you for your assistance.

Sincerely yours,

  
James A. Hunter, Jr.

JAH/ap

Enclosures

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REGISTRATION NO. .... Filed 1425

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MANUALLY EXECUTED INSTRUMENT

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INTERSTATE COMMERCE COMMISSION

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MANAGEMENT AGREEMENT

BETWEEN

HILLMAN MANUFACTURING COMPANY,  
AS OWNER

AND

DETROIT AND MACKINAC RAILWAY COMPANY,  
AS MANAGER

DATED AS OF OCTOBER 31, 1978

(COVERING UP TO 250 GENERAL PURPOSE BOXCARS)

---

Filed and recorded with the Interstate Commerce Commission  
pursuant to Section 20c of the Interstate Commerce Act on  
November , 1978 at \_\_\_\_\_, Recordation No. \_\_\_\_\_.

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\*This Index is included for convenience only and does not form a part of, or affect any construction or interpretation of this Instrument.

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MANAGEMENT AGREEMENT dated as of October 31, 1978, between HILLMAN MANUFACTURING COMPANY, a Pennsylvania corporation (hereinafter called the "Owner") and DETROIT AND MACKINAC RAILWAY COMPANY, a Michigan railroad corporation (hereinafter called "Manager").

WHEREAS, the Owner has entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the "Conditional Sale Agreement") with WHITTAKER CORPORATION (BERWICK FORGE AND FABRICATING DIVISION) (hereinafter called the "Builder"), and WILMINGTON SECURITIES, INC. (hereinafter called the "Guarantor"), wherein the Builder has agreed to construct, sell and deliver to the Owner certain units of railroad equipment described in Schedule A hereto, (hereinafter individually called a "Unit" and collectively the "Units" or "Equipment"), a copy of which Conditional Sale Agreement has been delivered to the Manager; and

WHEREAS, the Builder has assigned or will assign its interest in the Conditional Sale Agreement to The Provident Bank as Agent (hereinafter called the "Agent") pursuant to an Agreement and Assignment (hereinafter called the "Assignment") dated as of the date hereof between the Builder and the Agent, a copy of which has been delivered to the Owner, the Guarantor and the Manager; and

WHEREAS, the Owner desires to provide the Equipment to the Manager so that the Manager may use, manage, and maintain the Equipment pursuant to the terms of this Agreement, and the Manager desires to take possession of and responsibility as hereinafter set forth for, the Equipment, and to use, manage and maintain the Equipment pursuant to the provisions hereof;

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants hereinafter contained, the parties hereto hereby agree as follows:

1. Provision and Ownership/Use of Equipment. Owner hereby agrees to provide the Equipment to Manager, and Manager agrees to accept, use, manage and maintain the Units, upon the terms and conditions hereinafter set forth.

2. Delivery and Acceptance of Equipment. The Owner hereby appoints the Manager its agent for inspection and acceptance of the Units pursuant to the Conditional Sale Agreement. The Owner will cause the sample Unit and each other Unit to be delivered to the Manager at the point or points within the United States of America at which such Unit is delivered to the Owner under the Conditional Sale Agreement. Upon such delivery, the Manager, at its own expense, will cause an authorized representative of the Manager to inspect the sample Unit, and if such Unit is

found to conform to the specifications described in the Conditional Sale Agreement and all applicable governmental regulations to accept delivery of such Unit and to execute and deliver to the Owner, the Agent and to the Builder a certificate of acceptance (hereinafter called a "Certificate of Acceptance") in accordance with the provisions of the Conditional Sale Agreement, stating that such Unit has been delivered, inspected and accepted on behalf of the Manager and the Owner on the date of such Certificate of Acceptance (such date being hereinafter called the "Delivery Date") and is marked in accordance with Section 8 hereof; whereupon such Unit shall be deemed to have been delivered to and accepted by the Manager and shall be subject thereafter to all the terms and conditions of this Management Agreement.

3. Term. The initial term of this Management Agreement (hereinafter called the "Initial Term") as to each Unit shall begin on the date of the delivery to and acceptance by the Manager of such Unit and, shall terminate with respect to all Units on December 31, 1998; provided, however, this Management Agreement shall automatically be extended for successive periods of 12 months each (hereinafter called an "Extended Term") with respect to all Units not suffering a Casualty Occurrence (as hereinafter defined) until such time as the Manager or Owner shall give written notice to the other not less than six months prior to the end of the Initial Term or any Extended Term of its intention to terminate this Management Agreement, in which case this Management Agreement shall terminate as to all, but not less than all, of the Units on the last day of the Initial Term or the Extended Term set forth in such notice.

The obligations of (i) the Manager to make the Remittances (as hereinafter defined) due and payable hereunder, and (ii) the Owner to reimburse the Manager for maintenance expenses, taxes and other amounts hereinafter required to be reimbursed by the Owner shall survive the expiration of the Initial Term or any Extended Term of this Management Agreement.

4. Interline Use of Equipment. Manager shall cause the Units to be loaded and placed into interline interchange service (in the United States of America, Canada and/or Mexico) in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") Interchange Rules and Agreements as soon as practicable after their respective Delivery Dates and shall cause the Equipment to continue to be used in such interline interchange service throughout the term of this Management Agreement.

At no time during the term of this Management Agreement will Manager give preference for railroad car loadings on its tracks with shipments destined for locations off Manager's tracks (such shipments being hereinafter called "Outbound Loadings") to railroad equipment similar to the Units owned, leased, managed, interchanged or otherwise obtained by Manager from others over the preference for Outbound Loadings given to the Units; provided, however, that if at any time during the term of this Agreement, Manager shall waive Rules 1 and/or 2 of the AAR Interchange Rules, and if, for any period of six consecutive months thereafter, Utilization of the Units (as hereinafter defined in Section 6) is less than 80%, then Manager shall thereafter give preference (to the fullest extent permitted by applicable law) to the Units for Outbound Loadings over all other similar railroad equipment owned, leased, managed, interchanged or otherwise obtained by Manager until Utilization of the Units shall be not less than 80% for six consecutive months. If for any period during the term of this Management Agreement the Manager shall give preference for Outbound Loadings to railroad equipment owned, leased, managed, interchanged or otherwise obtained by Manager over the preference given to the Units, or if the Manager shall fail to give preference to the Units according to the provisions of the preceding sentence, then the Manager shall pay to the Owner the difference between the revenue earned by the Units during such period and the revenue which the Units would have earned if the Utilization of the Units had been 80% for such period.

5. Remittance of Earnings. All payments (except those arising in respect of a Casualty Occurrence as hereinafter defined) received by Manager from other railroads or from any other party for use of or relating to the Units including, without limitation, mileage charges, straight car hire payments, penalties and incentive car hire payments shall, to the fullest extent permitted by law, promptly be paid by Manager to the Owner, not later than the fifth (5) business day after the receipt thereof by Manager, together with an accounting thereof as soon as practicable thereafter. Additionally, not later than the fifth (5) business day after the end of each month, Manager shall remit to the Owner, an amount equal to the lesser of (i) straight car hire payments and incentive car hire payments, if any, for each Unit for each day for which Manager has received demurrage during the preceding month, and (ii) the total amount of demurrage received by the Manager for such Units during such month. (All sums required to be paid by Manager to Owner pursuant to the provisions of this Section 5 are hereinafter sometimes collectively referred to as "Remittances").



Manager shall use its best efforts to collect from all other railroads over whose tracks the Units travel and from any other party using the Units any and all sums which may be due from time to time from such other railroad or party with respect to the Units including, without limitation, mileage charges, straight car hire payments, demurrage, penalties, and incentive car hire payments.

If any Remittance referred to above is due on other than a business day, such remittance shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

6. Management Fees. In addition to reimbursement for expenses incurred by Manager for maintenance, insurance, taxes, or other purposes as otherwise provided herein, but only to the extent so set forth herein, Manager shall be paid a fee not later than the earlier of March 31, 1979 or the Delivery Date of the 250th Unit of \$100 per Unit delivered and accepted pursuant to this Management Agreement.

As additional compensation for its duties hereunder, Manager shall be paid by Owner a fee of \$240 per Unit per annum commencing on the date of acceptance of each Unit respectively. Such fee shall be payable quarterly (i) in arrears on December 31, 1978, March 31, 1979 and June 30, 1979, and (ii) in advance on the first day of each July, October, January and April during the remaining term as hereof commencing July 1, 1979. Such fee shall be prorated proportionately for periods less than a full calendar quarter with respect to (i) any Unit suffering a Casualty Occurrence and (ii) the calendar quarter during which a Unit is first delivered to and accepted by the Manager hereunder.

For the purposes of this Management Agreement, including computation of "Incentive Management Fees" (as hereinafter defined), the terms "Utilization of the Units" and "Fixed Expenses", shall have the following meanings:

(a) "Utilization of the Units" shall be a fraction, the denominator of which (sometimes herein called "100% Utilization Revenue") is the amount that would be payable to Owner in accordance with the provisions of Section 5 hereof with respect to the period for which Utilization of the Units is being determined, assuming that all of the Units traveled fifty-six (56) miles each day during such period and earned per diem and incentive per diem payments, if applicable, under the then prevailing AAR Car Hire Rate Table, and none

of such travel was on Manager's tracks; and the numerator of which is the actual aggregate of all payments (including, without limitation, mileage charges, straight car payments, and incentive car payments) actually received by Owner from Manager for use of such Units during such period. Each Unit shall be subject to inclusion in the determination of Utilization of the Units as of its Delivery Date. In the event that:

(i) a Unit has been destroyed or damaged beyond repair, and has been so reported in accordance with Rule 7 of the AAR Car Purchase and Car Hire Agreement Code of Car Hire Rules-Freight; and

(ii) the Casualty Value with respect to such Unit has been received by the Owner,

said destroyed or damaged Unit may be removed from inclusion in the determination of Utilization of the Units as of the date the payment of Car Hire Payments under the AAR Car Service and Car Hire Agreement Code of Car Hire Rules-Freight with respect to such Unit shall cease. Utilization of the Units shall be calculated for all the Units then subject to this Management Agreement during any period for which such calculation shall be made, and not on a Unit-by-Unit basis.

(b) "Fixed Expenses" for any period shall be determined on a cash basis and shall be deemed to be the sum of (i) property taxes with respect to the Units paid by Owner or reimbursed to Manager by Owner pursuant to Section 9 hereof; (ii) insurance premiums with respect to the Units paid by Owner or reimbursed to Manager by Owner pursuant to Section 21 hereof; (iii) an allowance for maintenance at the rate of \$600 per Unit per annum (whether the actual costs of maintenance reimbursed to Manager by Owner pursuant to Section 12 hereof shall be greater or less than \$600 per Unit per annum); (iv) installment payments of Conditional Sale Indebtedness together with interest thereon (as defined in the Conditional Sale Agreement) required to be paid to the Agent pursuant to the Conditional Sale Agreement as now in effect and Assignment for such period; (v) Eight Percent (8%) per annum of the sum of (x) the portion of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment payable by the Owner to the Vendor pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale

Agreement, (y) the reasonable costs and expenses paid by the Owner pursuant to Article 20 of the Conditional Sale Agreement, less the first \$200,000 of such expenses paid by the Vendor pursuant to the proviso contained in such Article and (z) \$130,000; and (vi) the sum of \$90,000 per annum.

If, in the period commencing on the Delivery Date of the first Unit and ending on December 31, 1979, or in any calendar year thereafter during the term of this Management Agreement, the Remittances paid to Owner pursuant to Section 5 hereof equal or exceed the amount of the payments which would have been remitted to Owner pursuant to Section 5 hereof in such period if the Utilization of the Units for such period had been 85%, then Owner shall pay Manager an incentive fee (herein called an "Incentive Fee") equal to one-half of the excess of (i) the Remittances received by Owner during such period over (ii) the Fixed Expenses for such period.

If, in the period commencing on the Delivery Date of the first Unit and ending on December 31, 1979, or for any calendar year thereafter during the term of this Management Agreement, the Remittances paid to Owner pursuant to Section 5 hereof are less than the amount of the payments which would have been received by Owner if the Utilization of the Units for such period had been 85%, but exceed the Fixed Expenses for such period, Owner shall pay Manager an Incentive Fee equal to (x) the payments remitted to Owner pursuant to Section 5 hereof in such period minus (y) one-half of the sum of (i) the payments which would have been remitted to Owner pursuant to Section 5 hereof in such period if the Utilization of the Units for such period had been 85% plus (ii) the Fixed Expenses for such period; provided, however, that no fee, credit, debit or other adjustment shall arise under this paragraph if the foregoing calculation shall result in a negative number.

By way of example of the foregoing and not in limitation thereof, Schedule B is attached hereto and incorporated herein by this reference thereto for the purpose of illustrating the calculation of Incentive Management Fees under this Section 6.

Any Incentive Fee payable pursuant to the preceding paragraphs of this Section 6 shall be determined as soon as practicable after each December 31 during the term of this Management Agreement, but no later than February 1 of each year, and shall be paid by Owner within thirty (30) days of the final determination of such amount.

7. Adjustments for Underutilization. If, in the period commencing on the Delivery Date of the first Unit and ending on December 31, 1979, or for any calendar year thereafter during the term of this Management Agreement, the Utilization of the Units for such period exceeds 85%, then the Incentive Fee payable to Manager pursuant to the provisions of the 4th paragraph of Section 6 hereof attributable to the Utilization of Units in excess of 85% shall be deemed, for the purposes hereof, to be an "Adjustment Credit". If, in the period commencing on the Delivery Date of the first Unit and ending on December 31, 1979, or for any calendar year thereafter during the term of this Management Agreement, up to and including 1994, the Utilization of the Units in such year is less than eighty percent (80%), [or if, in any year during the term of this Management Agreement after 1994, the Utilization of the Units in such year is less than sixty percent (60%)], then within thirty (30) days after the determination of Utilization of the Units for such year, Manager shall pay over to Owner an amount equal to the lesser of (a) one-half of the difference between the payments theretofore received with respect to such year for the Units and the payments that would have been received if the Utilization rate for the Units for such year were 80% [or, if such is 1995 or later, 60%], or (b) the Adjustment Credits theretofore accrued less any sums theretofore paid to Owner pursuant to this sentence. Within thirty (30) days after the determination of Utilization of the Units for such year, Manager may, at its option and upon not less than 10 days prior written notice to Owner, make such payments to Owner as shall equal the difference, if any, between (c) the sum of (i) 200% of amount of any Adjustment Credits paid over by Manager to Owner in accordance with the immediately preceding sentence, plus (ii) the Remittances theretofore received by Owner with respect to such year for Units and (d) the Remittances that would have been received by Owner if the Utilization of the Units for such year were 80% [or, if such year is 1995 or later, 60%]. If Manager shall not make the optional payments in accordance with the immediately preceding sentence, Owner may terminate this Management Agreement as to all or such lesser number of Units as Owner shall determine on 10 days written notice to Manager; provided, however, that if during such year there was a strike or Act of God which resulted in Utilization of the Units below Eighty Percent (80%), (or, if such year is 1995 or later, Sixty Percent (60%)), and unless in the reasonable good faith opinion of Owner such strike or Act of God is expected to result in Utilization of the Units below Eighty Percent (80%), (or, if such year is 1995 or later, Sixty Percent (60%)), for the Ninety (90) day period immediately subsequent to the date of determination of the Utilization of the Units for such year, then Owner may not terminate this Agreement pursuant to the provisions of the first clause of this sentence.

8. Identification Marks. The Manager will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not therein listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Management Agreement to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following words:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED  
UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c--  
THE PROVIDENT BANK, CINCINNATI, OHIO, AGENT, SECURITY  
OWNER"

or other appropriate words designated by the Owner, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Owner's title to and property in such Unit and the rights of the Owner under this Management Agreement. The Manager will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and words which may be removed, defaced or destroyed. The Manager will not change the identifying number of any Unit unless and until (i) a statement of a new number or numbers to be substituted therefor shall have been filed with the Owner and filed, recorded and deposited by the Manager in all public offices where this Management Agreement shall have been filed, recorded and deposited including, without limitation, the ICC, Official Railway Equipment Register and the Universal Machine Language Equipment Register, and (ii) the Manager shall have furnished to the Owner an opinion of counsel to the effect set forth in subparagraph (iv)(B) of Section 26 hereof in respect of such statement.

Promptly upon delivery of an invoice therefor from Manager, Owner shall reimburse Manager for its out-of-pocket expenses so invoiced in keeping each Unit numbered and marked in accordance with the provisions of this Section 8. Manager shall be entitled to issue such invoice up to Thirty (30) days prior to any date on which it reasonably expects to incur the expense so invoiced, in which event Owner shall reimburse Manager in advance for such invoiced expenses not later than Five (5) days prior to the date on which the Manager reasonably expects to actually incur such expense. In the event that, during the continuance of this Management Agreement, the Owner becomes liable for the reimbursement of such expense pursuant to this Section 8, such liability

shall continue, notwithstanding the expiration of this Management Agreement, until all such expenses are paid or reimbursed by the Owner.

Except as above provided, the Manager will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Manager may cause the Units to be lettered with the names or initials or other insignia customarily used by the Manager or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to manage the Units as permitted under this Management Agreement.

9. Taxes. Manager shall pay and discharge all sales, use, personal property, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature, together with any penalties, fines or interest thereon (the foregoing being hereinafter called "Impositions") imposed against Owner, any assignee of Owner's rights hereunder, Manager or the Equipment by any Federal, state or local government or taxing authority upon or with respect to the Equipment or upon the purchase, ownership, delivery, lease, possession, use, operation, return, sale or other disposition thereof hereunder or in connection herewith, or upon the rentals, receipts, or earnings arising therefrom, or upon or with respect to this Management Agreement (excluding, however, taxes on, or measured by, the net income of Owner or any such assignee) unless, and to the extent only that, any such Imposition is being contested by Manager or Owner in good faith and by appropriate proceedings and the non-payment thereof does not, in the reasonable opinion of the Owner, adversely affect the title, property or rights of the Owner to or in the Equipment under the Conditional Sale Agreement and Assignment.

If any Imposition is levied against Manager and the Units are included in the calculation of such Imposition, then, (a) if such Imposition is apportioned by the appropriate taxing authority between the Units and the other property owned or used by Manager, then Owner shall have the right (but not the obligation) to contest such apportionment, at its own expense, by any proceedings Owner deems appropriate under the circumstances, and (b) if such Imposition is not apportioned by the appropriate taxing authority between the Units and the other property owned or used by Manager, then such Imposition shall be apportioned between Owner and Manager on such basis as Owner and Manager shall agree and, failing such agreement, as may be determined by a majority decision of a panel of three (3) independent arbitrators, one of whom shall be selected by Manager, one of

whom shall be selected by Owner, and the third to be selected by the Owner and Manager designated arbitrators; provided, however, that if such Imposition is based upon the value of property, the portion of such Imposition apportioned to Owner shall in no event exceed the fraction thereof, the denominator of which is the value of all of the railroad equipment and all other property owned or used by Manager (whether similar or dissimilar to the Units and whether real, personal or mixed) included in the property on which such Imposition is based, and the numerator of which is the value of the Units (with "value", in each case, determined in a manner consistent with the manner in which value is defined and calculated for the purpose of such Imposition under the laws, rules and regulations in effect during the period for which such Imposition is assessed). If Manager shall be entitled to any credit against any such Imposition or any other government charge, which credit shall arise as a result of any expenditure by Manager not related to the Units, then Manager shall be entitled to the full benefit of such credit.

Manager shall comply with all federal, state and local laws concerning the preparation and filing of tax returns with respect to the Equipment and shall provide copies of such returns to Owner not less than five (5) business days prior to the filing of such return. Owner shall have the right to review all such tax returns prior to their filing, and shall have the right to approve or object to any such tax returns or portions thereof which relate to the Equipment. Unless Owner objects to the filing of such return and so notifies Manager before such return is filed, Owner shall be deemed to have approved such return. In the event Owner objects to the filing of such return as prepared by Manager, such return shall be revised as Owner and Manager shall agree and, failing such agreement, as Owner shall direct, unless Manager is advised by its independent legal counsel that such return would not be in compliance with any applicable governmental law, rule or regulation, in which event, Owner may file such return on its own behalf if permitted to do so, and if not so permitted by applicable law, Manager shall file such return as it determines to be proper and correct under applicable law.

If, and to the extent permissible under the laws of the State of Michigan, Owner shall have the right to pay any personal property or similar tax, assessment or other government charge with respect to the Units, in lieu of Manager paying such Imposition, then Owner shall have the right, but not the obligation, to pay such imposition and upon agreeing to pay such Imposition, Owner shall be freed of its obligation to reimburse Manager with respect thereto under the provisions of this Section 9.

For purposes of this Section 9, the term "Impositions" shall include, and the Manager shall be entitled to reimbursement from Owner in accordance with the next succeeding paragraph for, any incremental taxes on personal property paid by Manager as a result of or arising out of its performance of the transactions contemplated hereby. Such incremental taxes shall be the difference between (i) the amount of such personal property taxes actually paid by the Manager (whether during the term of this Agreement, or after its expiration), and (ii) the amount of taxes on personal property which the Manager would have paid in the absence of this Agreement and the transactions contemplated hereby. Upon expiration of the term of this Agreement, Owner shall reimburse Manager for any incremental taxes on personal property which the Manager will incur subsequent to such termination. In the event the Manager and the Owner cannot agree upon the amount of such incremental taxes on personal property, either party may demand that such dispute be resolved by a panel of Three (3) arbitrators in the manner set forth in the second paragraph of this Section 9, in which case the dispute shall be submitted for arbitration and the decision of a majority of the panel of arbitrators shall be binding upon the parties.

Promptly upon delivery of an invoice therefor from Manager, Owner shall reimburse Manager for all Impositions so invoiced by Manager with respect to the Equipment, except such Impositions (i) on (based upon, or measured by) net income from the Equipment earned by or imposed on Manager, (ii) penalties assessed against Manager because of its failure to comply timely with any applicable governmental law, rule or regulation and (iii) Impositions the amount of which are under dispute and being submitted to arbitration pursuant to the preceding paragraph. Manager shall be entitled to issue such invoice up to Thirty (30) days prior to any date on which it reasonably expects to incur the expense so invoiced, in which event Owner shall reimburse Manager in advance for such invoiced expenses not later than Five (5) days prior to the date on which the Manager reasonably expects to actually incur such expense. In the event that, during the continuance of this Management Agreement, the Owner becomes liable for the payment or reimbursement of any

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Imposition pursuant to this Section 9, such liability shall continue, notwithstanding the expiration of this Management Agreement, until all such Impositions are paid or reimbursed by the Owner.

10. Reports and Records. On or before March 31 in each year, commencing with the year 1980, the Manager shall furnish to the Owner an accurate statement signed by an executive officer of Manager (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then subject to this Agreement, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Owner may reasonably request, (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and markings required by Section 8 hereof have been preserved or replaced, and (c) certifying that all amounts, whether Remittances or otherwise, payable hereunder by Manager to Owner through the preceding December 31 have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their nonpayment. The Owner shall have the right, by its agents, to inspect the Equipment and the Manager's records with respect thereto at such reasonable times as the Owner may request during the term of this Agreement.

Manager shall also furnish, or cause to be furnished to Owner on or before April 30 in each year during the term of this Agreement, commencing with the year 1979, audited financial statements of Manager prepared in accordance with generally accepted accounting principles.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise, or there shall occur any other material interruption or termination of use of any Unit regardless of the cause (such occurrences being hereinafter called a "Casualty Occurrence"), during the term of this Management Agreement, the Manager shall, within five (5) days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Owner with respect thereto.

Additionally, Manager shall furnish to Owner all other reports, statements and information prepared by Manager or otherwise in the possession of Manager which Owner is required to provide to the Vendor pursuant to Article 8 of the Conditional Sale Agreement. Such reports, statements and information shall be delivered to Owner sufficiently in advance of the dates on which Owner is required to deliver such items to the Vendor so as to enable the Owner to comply with Article 8 of the Conditional Sale Agreement.

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The Manager shall prepare and deliver to the Owner at least five (5) days prior to the required date of filing (or, to the extent permissible, file on behalf of the Manager) any and all reports (other than income tax returns) relating to maintenance, registration and operation of the Equipment to be filed by the Manager with any federal, state or other regulatory authority by reason of the ownership by the Owner of the Units or the provision thereof to the Manager. Such documents shall include, but are not limited to, registration with the ICC, in the official Railway Equipment Register and in the Universal Machine Language Equipment Register and any and all reports which may be required from time to time by any governmental agency with jurisdiction over the Agent, the Owner, the Manager, or the Equipment. Manager shall perform all record keeping functions relating to use of the Equipment, and shall maintain records relating thereto whether such use is by Manager or other railroads, all in accordance with AAR Railroad Interchange Agreements and Rules. Such records shall include, but not be limited to, car hire reconciliations. Manager shall supply Owner with copies of such records regarding use of the Equipment as Owner may reasonably request. All records maintained hereunder, including all records of payments received in connection with the use of the Equipment, or expended in connection with the maintenance of the Equipment, charges and correspondence relating to the Equipment shall be separately recorded and maintained by Manager in a form suitable for reasonable inspection by Owner from time to time during Manager's regular business hours.

11. DISCLAIMER OF WARRANTIES AND COMPLIANCE WITH LAWS AND RULES. THE OWNER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE MANAGER HEREUNDER, AND THE OWNER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR SHALL OWNER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT), it being agreed that all such risks, as between the Owner and the Manager, are to be borne by the Manager. The Manager's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Manager and the Owner that all Units described therein are in all the foregoing respects satisfactory to the Manager, and the Manager will not assert any claim of any nature whatsoever against the Owner based on any of the foregoing matters.

The Owner hereby appoints and constitutes the Manager its agent and attorney-in-fact during the term of this Management Agreement to assert and enforce, from time to time, in the name of and for account of the Owner, at the Owner's sole cost and expense, whatever claims and rights the Owner may have under the provisions of Article 13 of the Conditional Sale Agreement which claims and rights the Manager shall assert and enforce.

The Manager agrees, for the benefit of the Owner to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all rules of the Department of Transportation, the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Manager will conform therewith; provided, however, that the Manager or Owner may, in good faith, contest, at the expense of the contesting party, the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner, adversely affect the property or rights of the Owner and does not result in a Unit being removed from the regular interline interchange service contemplated hereby; and provided, further, that no such alterations, modifications or replacement of parts shall be made without the prior authorization of the Owner unless made by a railroad other than the Manager without the prior approval of the Manager.

Title to any such alteration, replacement or addition of or to any part on any Unit shall be and remain with Owner.

12. Maintenance of Equipment. Manager shall inspect all Units interchanged to insure that such Units are in good working order and condition in the same manner as Manager inspects railroad equipment owned by it. Manager shall at all expense, whatever claims and rights the Owner may have under times keep the Equipment in good repair and efficient condition and working order, eligible for interchange with other railroads pursuant to AAR Interchange Standards. Manager shall supply all parts, services, and other items required in the operation and maintenance of the Equipment. All parts, replacements, substitutions and additions to or for any Equipment shall immediately become Equipment and the property of Owner. Charges to Owner by Manager for all repairs, maintenance and servicing performed by Manager pursuant to the provisions hereof shall be in an amount equal to the actual costs of materials and direct labor (and charges, if any, by other railroads) incurred by Manager in effecting such repairs, maintenance and servicing; but in no event, shall such charges exceed AAR Standard Rates as in effect at the time of such repairs, maintenance or service, or such other rules which supercede or replace AAR Standard Rates.

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Anything herein to the contrary notwithstanding, Owner shall have the right to require that any or all repairs, maintenance and/or servicing on any or all of the Units be performed by one or more other railroads or others able to do such work if Owner determines that such work can be done by others at more favorable rates in which event the cost of transporting the Equipment to such other railroads shall be borne by the Owner. Promptly upon request therefor from Manager, Owner will reimburse Manager for all costs, expenses, fees and charges incurred in connection with repairing, maintaining and servicing the Units, unless any such repairs, maintenance or servicing was (or were) (i) occasioned by the negligence or willful misconduct of Manager or any of Manager's agents or employees or (ii) would be deemed a "handling line responsibility" pursuant to Rule 96 of the AAR Field Manual as in effect at the time, or such other rule which supercedes or replaces such provision. In the event that, during the continuance of this Management Agreement, the Owner becomes liable for the payment or reimbursement of any maintenance expense pursuant to this Section 12, such liability shall continue notwithstanding the expiration of this Management Agreement, until all such maintenance expenses are reimbursed or paid by the Owner.

13. Default. If, during the continuance of this Management Agreement, one or more of the following events (each such event being hereinafter sometimes called an "Event of Default") shall occur and be continuing:

- A. default shall be made in the payment by Manager of any sum required to be paid or remitted hereunder, and such default shall continue for a period of five (5) days after notice from the Owner that it believes such payment is due;
- B. Manager shall operate any Unit or permit any Unit to be operated at a time when the insurance required by Section 21 shall not be in effect unless the Manager is unable to terminate use of such units;
- C. any representation or warranty, made by Manager in this Management Agreement is untrue in any material respect, or any statement, report, schedule, notice or other writing furnished by Manager to Owner in connection herewith is untrue in any material respect on the date as of which the facts set forth are stated or certified;
- D. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Manager contained herein, and such default shall continue

for thirty (30) days after written notice thereof from the Owner to the Manager;

- E. any act of insolvency by Manager, or the filing by Manager of any petition or action under any bankruptcy, reorganization, insolvency, or moratorium law, or any other law or laws for the relief of, or relating to, debtors;
- F. the filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Manager that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Manager, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment;

then, in any such case, the Owner, at its option may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Manager of the applicable covenants of this Management Agreement (and Manager agrees to bear Owner's costs and expenses, including reasonable attorneys' fees, in securing such enforcement) or to recover damages for the breach thereof; and/or

(b) by notice in writing to the Manager terminate this Management Agreement, whereupon all rights of the Manager to manage, possess and use the Units shall absolutely cease and terminate as though this had never been made, but the Manager shall remain liable as hereinafter provided; and/or

(c) by its agents enter upon the premises of the Manager or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Manager, or its successors or assigns, to use the Units for any purposes whatever;

but the Owner shall, nevertheless, have a right to recover from the Manager any and all amounts which under the terms of this Management Agreement may be then due or which may have accrued to the date of or subsequent to the date such termination and also to recover forthwith from the Manager, (i) any damages and expenses, including reasonable attorney's fees, in addition thereto which the Owner shall have sustained by reason of the breach of any covenant, representation or warranty of this Management Agreement, and (ii) all costs

and expenses incurred in searching for, taking, removing, keeping, and storing such Units of Equipment, and (iii) all additional amounts owing by Manager hereunder, whether as Remittances, indemnification, or otherwise.

The remedies in this Management Agreement provided in favor of the Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Manager hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Manager hereby waives any and all existing or future claims to any offset against the Remittances or any other payments due Owner hereunder and agrees to make such Remittances and all other payments regardless of any offset or claim which may be asserted by the Manager or on its behalf.

The failure of the Owner to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The non-payment by Owner of any sum required herein to be paid or reimbursed by Owner to Manager not later than fifteen (15) days after such payment is due shall be a default (hereinafter called an "Owner Default") by Owner hereunder unless the amount not paid by Owner is disputed by Owner and Owner shall have given notice to Manager of the nature of such dispute. Upon the occurrence of such an Owner Default, Manager shall be entitled to exercise the rights provided to it under Paragraph 6(a)(1)(C) of the Finance Agreement to (1) direct the Agent to withhold further disbursements to the Owner pursuant to the Finance Agreement, and (2) obtain reimbursements from the Agent [from the sums the Agent is then holding under Paragraph 6(a)(1)(C) of the Finance Agreement] of such amounts as the Manager requests for out-of-pocket expenses paid (or to be paid within thirty (30) days of the date of such request) by the Manager to third parties pursuant to the Manager's obligations under this Management Agreement and for which the Manager reasonably believes itself to have the right to reimburse from the Owner hereunder. In addition, Manager shall have such other rights as may be available to it at law or in equity; provided, however, so long as the Management Agreement Assignment shall be in effect, (i) Manager shall not offset any amounts which it claims to be due from Owner against any Remittances or other payments it is obligated to make pursuant to this Management Agreement, and (ii) Manager shall continue to perform and observe each and every other duty and covenant required to be performed or observed by the Manager hereunder,

notwithstanding the occurrence and continuance of an Owner Default. In the event the Owner disputes the occurrence of an Owner Default claimed by the Manager, or the Owner and Manager are unable to agree upon the disposition of any moneys held by the Agent pursuant to the proviso of Paragraph 6(a)(1)(C) of the Finance Agreement, such dispute or disagreement may be submitted, upon the request of either party, to a panel of three (3) independent arbitrators, one of whom shall be selected by Manager, one of whom shall be selected by Owner, and the third to be selected by the Owner and Manager designated arbitrators. The determination of a majority of such arbitrators as to such dispute or disagreement shall be binding upon both parties hereto.

14. Return of Units Upon Default. If an Event of Default shall occur and be continuing or if this Management Agreement shall terminate pursuant to Section 13 hereof, the Owner may take, or cause to be taken or demand from the Manager, immediate possession of Equipment, or one or more of the Units thereof, and may remove the same from possession and use of the Manager. For such purpose, the Owner may enter upon the premises of the Manager or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids, including but not limited to diesel fuel or other necessary petroleum products, and any available trackage and other facilities or means of the Manager, with or without process of law.

In case the Owner shall demand possession of the Equipment pursuant to this section and shall designate a reasonable location or locations on the lines or premises of the Manager or points at which the lines of the Manager interconnect with the lines of any other railroad for the delivery of Equipment to the Owner, the Manager shall at its own cost, expense and risk, forthwith and in usual manner, cause the Equipment to be moved to such location or locations on Manager's lines or interchange point or points and shall there deliver the Equipment or cause it to be delivered to the Owner and if so without the right to any reimbursement (except as hereinafter specifically provided to contrary), obliterate any insignia or other indentifying markings or lettering it has theretofore placed on the Equipment and restore the exterior to its original appearance, wear and tear otherwise hereunder permitted being excepted. At the option of the Owner, the Owner may keep the Equipment on any of the lines or premises of the Manager until the Owner shall have leased, sold or otherwise disposed of the same (whether by public or private sale or othersie), and for such purpose, the Manager agrees to furnish, without charge

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of rent or storage, the necessary facilities at any point or points selected by the Owner reasonably convenient to the Manager; provided such storage without rent shall not exceed a period of sixty (60) days from the date Manager makes the Equipment available to Owner and if so requested by Owner, Manager shall, at its own expense and without the right to any reimbursement (except as hereinafter specifically provided to the contrary), obliterate any insignia or other identifying markings or lettering it has theretofore placed on the Equipment and restore the exterior to its original appearance, wear and tear otherwise hereunder permitted being excepted. During any storage period, the Manager will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same. Without in any way limiting the obligation of the Manager under the foregoing provisions of this Section 14, the Manager hereby irrevocably appoints the Owner as agent and attorney of the Manager with full power and authority, including the power of substitution, at any time while the Manager is obligated to deliver possession of any Unit to the Owner to demand and take possession of such Unit in the name and on behalf of the Manager from whomsoever shall be in possession of such Unit at the time. This Agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Manager requiring specific performance hereof. The foregoing provisions of this Section 14 notwithstanding, if this Management Agreement shall terminate pursuant to an Event of Default under Clause E or F of Section 13 of this Agreement at a time when the Utilization of the Units for the Twelve (12) month period immediately preceding such termination exceeded Seventy-Five Percent (75%), then Manager shall be entitled to reimbursement from the Owner for all of Manager's expenses incurred on complying with the requirements of this Section 14 of this Agreement. In accordance with the foregoing sentence and promptly upon delivery of an invoice therefor from Manager, Owner shall reimburse Manager for its expenses so invoiced incurred in connection with returning the Units, obliterating any insignia or other identifying markings and restoring the exterior of such Units to their original appearance pursuant to the provisions of this Section.

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The Manager hereby expressly waives any and all claims against the Owner and its assigns or agents for damages of whatever nature in connection with the retaking of any Unit of the Equipment in any reasonable manner.

15. Sublease, Assignment, Merger of Manager. So long as Manager shall not be in default under this Management Agreement, Manager shall be entitled to the possession and use of the Units in the manner and to the extent that railroad cars similar to the Units are customarily used in the railroad freight business and in accordance with the terms of this Management Agreement, but, without the prior written consent of Owner, Manager shall not assign or transfer its interest under this Management Agreement or in or to the Equipment.

So long as Manager shall not be in default under this Management Agreement, Manager shall be entitled to manage the Units and to permit the use of the Units upon railroads in the usual interline interchange of railway traffic, but only upon and subject to all the terms and conditions of this Management Agreement, provided, however, that the Manager (to the fullest extent permitted by applicable law) (a) shall not assign or permit the assignment of any Unit to service involving the regular operations and maintenance thereof outside the United States or permit any Unit to be outside the United States for more than 50% of any calendar year, and (b) shall not at any time permit more than 10% of the Units to be located outside the United States of America. Manager shall receive for the account of Owner compensation for such use from other railroads so using any of the Units. No assignment, lease or interchange entered into by Manager hereunder shall relieve Manager of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

Nothing in this Section 15 shall be deemed to restrict the right of Manager to assign or transfer its rights and interest under this Management Agreement in the Equipment or possession of the Equipment to any corporation (which shall have expressly assumed in writing the due and punctual payment and performance of all obligations hereunder of Manager) into or with which Manager shall have become merged or consolidated or which shall have acquired the property of Manager as an entirety or substantially as an entirety.

16. Assignment by Owner. Owner and any direct or remote assignee of any right, title or interest of Owner hereunder shall have the right at any time or from time to

time to assign part or all of its right, title and interest in and to this Management Agreement, but Manager shall be under no obligation to any assignee except upon written notice of such assignment from Owner. Without limiting the foregoing, Owner and any such assignee shall have the right at any time or from time to time to transfer its right, title and interest, under this Management Agreement.

Owner may obtain financing through a financial institution and secure such financial institution (hereinafter by granting a security interest or other lien on any or all the Equipment, this Management Agreement and sums due under this Management Agreement. In such event (a) the security agreement or lien instrument will specifically provide that such assignment of this Management Agreement will not relieve Owner from its obligations hereunder or be construed to be an assumption by such Secured Party of such obligations (but any such Secured Party may perform, at its option, some or all of Owner's obligations); (b) upon request by Owner or Secured Party, Manager will make all payments of amounts due hereunder directly to Secured Party; (c) Manager's obligations hereunder, including (without limitation) its obligation to make the Remittances described in Section 5 hereof, shall not be subject to any reduction, abatement, defense, set-off, counterclaim or recoupment for any reason whatsoever, which, however, shall not prevent Manager from asserting any claim separately against Owner or exercising its rights pursuant to Paragraph 6 (a)(1)(C) of the Finance Agreement; (d) Manager will not, after obtaining knowledge of any such assignment, consent to any modification of this Management Agreement without the consent of Secured Party; and (e) Manager will provide to Owner and Secured Party such certificates, statements or other information as Owner may reasonably request, including, without limitation, a "no-default certificate".

17. Return of Units Upon Expiration of Term. As soon as practicable on or after the expiration (or earlier termination pursuant to Sections 7 or 31) of the term of this Management Agreement with respect to any Unit, the Manager shall deliver possession of such Unit to the Owner upon such storage tracks of the Manager or to such interchange point or points of Manager as the Owner reasonably may designate, provided that such storage on the Manager's storage tracks does not interfere with the operation of the railroad of the Manager. The Manager will permit the Owner to store such Unit on such tracks for a period not exceeding sixty (60) days after delivery of possession to Owner hereunder and transport the same, at any time within such sixty (60) day period, to any reasonable place on the lines of railroad operated by the Manager, or to any connecting carrier for shipment, all as directed by the Owner, such movement and storage of any such Unit on the storage tracks of the

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Manager to be at the expense and risk of the Owner. During said sixty (60) day storage period and at the expiration thereof, the Manager agrees to transport the Units to any other reasonable place designated by the Owner, the movement of such Units to such places (other than to the places set forth in the immediately preceding sentence) to be at the expense and risk of the Owner. Manager shall remit to Owner promptly upon receipt thereof, any and all income earned and received by the Manager for use of such Units by others, including all income received from users pursuant to the Interstate Commerce Commission Car Hire Rate Table (hereinafter "Gross Revenues") during such movement, and the Manager shall use its best efforts to realize such Gross Revenues on such Units during such movement. During any storage period provided herein the Manager will maintain any insurance required pursuant to Section 21 hereof and will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Units, to inspect the same; provided, however, that the Manager shall not be liable, except in the case of negligence of the Manager or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Owner or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Management Agreement, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Manager requiring specific performance of the covenants of the Manager so to assemble, deliver, store and transport the Units. Each Unit returned to the Owner pursuant to this Section 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Manager, reasonable wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the AAR and/or the applicable rules of any governmental agency or other organization with jurisdiction for use of such Units in regular railroad interchange service, and if so requested by Owner, Manager shall, obliterate any insignia or other identifying markings or lettering it has theretofore placed on the Equipment and restore the exterior to its original appearance, wear and tear otherwise hereunder permitted being excepted. Promptly upon delivery of an invoice therefor from Manager, Owner shall reimburse Manager for all out-of-pocket expenses incurred by Manager in storing, delivering, insuring, obliterating any insignia or other markings on, or repairing or rehabilitating any of the Units pursuant to this Section 17. Owner's obligations to so reimburse the Manager shall survive the expiration (or earlier termination pursuant to Section 7 or 31) of the term of this Agreement.

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18. Manager's Warranties; Indemnification. Manager represents and warrants that:

(a) Manager is a corporation duly organized and existing in good standing under the laws of the State of Michigan.

(b) Manager is duly authorized to execute and deliver this Management Agreement, and is duly authorized to manage the Equipment hereunder and to perform its obligations hereunder.

(c) The execution and delivery of this Management Agreement by Manager, and the performance by Manager of its obligations hereunder, do not conflict with any provision of law or of the charter or by-laws of Manager or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Manager or to which Manager is a party.

(d) The execution, delivery and performance of this Management Agreement by Manager and the consummation by Manager of the transactions contemplated hereby do not require the consent, approval or authorization of, or notice to, any federal, state or local governmental authority or public regulatory body.

(e) Manager's financial statement as at December 31, 1977, a copy of which has been furnished to Owner, has been prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year and presents fairly the financial position of Manager as at the date thereof, and the results of its operations for the period then ended, and since such date there has not been any material adverse change in its financial position.

(f) This Management Agreement is a legal, valid and binding obligation of Manager, enforceable in accordance with its terms.

(g) There are not any pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of Manager and its subsidiaries on a consolidated basis (except as previously disclosed in writing by Manager to Owner) or the ability of Manager to perform its obligations under this Management Agreement.

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(h) To the best knowledge of Manager, there is no material fact which Manager has not disclosed to Owner in writing, nor so far as Manager can now reasonably foresee, which will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of Manager or the ability of Manager to perform its obligations under this Management Agreement.

The Manager hereby assumes liability for and agrees to indemnify, protect, save and keep harmless the Agent and each Investor (as defined in the Conditional Sale Agreement), and their respective successors, assigns, agents and servants, (each of the foregoing, as well as any successor or assign of any of the foregoing, together with its respective agents and servants being hereinafter in this paragraph referred to as an "Indemnatee"), from and against any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability), actions, suits, costs, expenses, and disbursements (including, without limitation, legal fees and expenses, of whatsoever kind and nature whether or not any of the transactions contemplated hereby are consummated) except such costs and expenses described in Article 20 of the Conditional Sale Agreement to be the responsibility of the Vendee and such other costs and expenses as the Owner specifically assumes or agrees to pay or reimburse pursuant to this Management Agreement, imposed on, incurred by or asserted against any Indemnatee (whether or not also indemnified against by any other person under any other document) in any way relating to or arising out of (i) the Finance Agreement (as defined in the Conditional Sale Agreement), the Conditional Sale Agreement, Assignment, this Management Agreement, the Management Agreement Assignment (as defined in the Conditional Sale Agreement), or the transactions contemplated by the foregoing instruments, (ii) the manufacture, purchase, acceptance or rejection of the Equipment, and (iii) the ownership, delivery, non-delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or other disposition of the Equipment; provided, however, that the foregoing indemnity shall not extend to any liability, obligation, loss, damage, penalty, claim, action, suit, cost, expenses or disbursement of any Indemnatee (A) resulting from the gross negligence or willful misconduct of such Indemnatee, (B) which is a tax, fee or other charge, based upon net income, gross receipts, franchise tax measured by net income based upon such gross receipts, or excess profits tax imposed upon such Indemnatee, (C) resulting from the failure of such Indemnatee to make available to the Agent the aggregate amount of its Commitment (as defined in the Finance Agreement) unless such failure shall

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be the result of the failure to satisfy a condition precedent to such Commitment or (E) in the nature of a claim for or loss resulting from the non-payment of principal or interest due under the Conditional Sale Agreement with respect to the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement). If either party hereto has knowledge of any liability hereunder indemnified against, it shall give prompt notice thereof to the other and the party entitled to be indemnified, as the case may be.

The Manager's obligations under the indemnities provided for in this Management Agreement shall be those of a primary obligor whether or not the party indemnified shall also be indemnified with respect to the same matter under the terms of the Finance Agreement, or any other document or instrument, and the person seeking indemnification from the Manager pursuant to any provisions of this Management Agreement may proceed directly against the Manager without first seeking to enforce any other right of indemnification. Upon the payment in full by the Manager of any indemnity provided for under this Management Agreement, the Manager shall be subrogated to any right of the person indemnified in respect of the matter as to which such indemnity was paid. It is the intention of the parties hereto that Manager's maximum liabilities under the indemnification provisions of this Section 18 shall be co-extensive with, but not greater than, Owner's indemnification obligations pursuant to the Finance Agreement and Conditional Sale Agreement.

The indemnities and agreements of the Manager provided for in this Management Agreement, and the Manager's obligations under any and all thereof, shall survive the expiration or other termination of this Management Agreement, the Conditional Sale Agreement, Assignment, Management Agreement or Management Agreement Assignment.

19. Owner's Warranties. Owner represents and warrants that:

(a) Owner is a corporation duly organized and existing in good standing under the laws of the State of Delaware.

(b) Owner is duly authorized to execute and deliver this Management Agreement, and is duly authorized to own the Equipment and to perform its obligations hereunder.

(c) The execution and delivery of this Management Agreement by Owner and the performance by Owner of its obligations hereunder, do not conflict with any provision

of law or of the charter or by-laws of Owner or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Owner or to which Owner is a party.

(d) The execution, delivery and performance of this Management Agreement by Owner and the consummation by Owner of the transactions contemplated hereby do not require the consent, approval or authorization of, or notice to, any federal, state or local governmental authority or public regulatory body.

(e) There are not any pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of Owner or the ability of Owner to perform its obligations under this Management Agreement.

(f) To the best knowledge of the Owner, there is no fact which Owner has not disclosed to Manager in writing, nor, so far as Owner can now reasonably foresee, which will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of Owner or the ability of Owner to perform its obligations under this Agreement.

20. Ownership of Equipment; Federal Income Taxes. It is the intent of the parties to this Management Agreement that Owner shall at all times be and remain the owner of all Units of Equipment. Manager shall at no time take any action or file any instrument which is inconsistent with the foregoing intent. Upon the request of Owner and/or any government agency having jurisdiction and/or any third party designated in writing by Owner as having an interest in the Equipment, Manager will take such action legally permissible and execute such documents as may be necessary to accomplish or more fully evidence the foregoing intent.

Owner shall be entitled to claim deductions, credits, and other benefits as are provided by the Internal Revenue Code of 1954, as amended, to the date hereof (hereinafter called the "Code"), to an owner of property, including, without limitation: (a) the maximum depreciation deduction for any year (hereinafter called the "Depreciation Deduction") with respect to the Units authorized under Section 167 of the Code, (b) deductions with respect to the interest payable under the Conditional Sale Agreement pursuant to Section 163 of the Code (hereinafter called the "Interest Deduction"), and (c) investment tax credit with respect to the Equipment

authorized pursuant to Sections 38 and 50 of the Code (hereinafter called the "ITC"). In furtherance of the foregoing, Manager shall maintain such records, execute such documents and take such other action as may be reasonably requested by Owner to permit Owner to claim the Depreciation Deduction, Interest Deduction, and ITC with respect to the Units and Manager shall take no action inconsistent with the foregoing intent.

21. Insurance. The Manager will maintain, at all times during the term of this Management Agreement (and thereafter during the 60 day period in which the Units are being stored pursuant to Sections 14 or 17 hereof), with reputable insurers acceptable to the Owner, insurance on each Unit in an amount not less than the greater of (i) the fair market value of each Unit as determined by Owner, or (ii) the Conditional Sale Indebtedness with respect to each Unit from time to time outstanding under the Conditional Sale Agreement, insuring against loss and destruction of, and damage to, such Unit arising out of theft, loss, damage, destruction, fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by Manager.

Manager shall further maintain with reputable insurers acceptable to Owner public liability and property damage insurance with respect to the Units in amounts not less than the greater of (a) the amounts of insurance maintained by Manager with respect to railroad equipment of a similar kind owned by Manager, or (b) bodily injury and property damage liability insurance in an amount not less than (x) \$1,000,000 with respect to personal injury to, or the death of, any one person, (y) \$5,000,000 with respect to personal injury to or the death of any number of persons arising out of one accident or occurrence and (z) \$2,500,000 for property damage with self insurance retention and deductibles not to exceed \$100,000. Each liability policy shall be primary without right of contribution from any other insurance which is carried by Owner and shall expressly provide that all of the limits thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

All such insurance policies shall (i) name the Manager, Owner and the Agent as the co-insureds, with losses to be payable to all such entities as their interests may appear, (ii) provide that the policies will not be invalidated as against the Owner or the Agent because of any violation of a condition or warranty of the policy or application therefor by Manager, and (iii) provide that the policies may be

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materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Owner and the Agent. The Manager shall deliver to the Owner prior to the First Closing (as defined in the Finance Agreement) to the commencement of the term of this Management Agreement for any Unit (or at such other time or times as the Owner may request) a certificate or other evidence of the maintenance of all such insurance required hereunder satisfactory to the Owner. In the event, at any time, the insurance required by this Section 21 shall not be in full force and effect, Manager shall not use the Equipment and shall use its best efforts to prohibit the use of any Unit of the Equipment by any other entity.

The proceeds of any insurance received by Owner on account of loss, damage or destruction to any Unit of the Equipment may, but are not required to, be used to acquire a replacement unit of railroad equipment similar to the Units which replacement unit may be delivered to the Manager and upon acceptance thereof, shall be subjected to this Management Agreement as if it were one of the original Units delivered hereunder.

Promptly upon delivery of an invoice therefor from Manager, Owner shall reimburse Manager for all insurance premiums so invoiced by Manager with respect to the Equipment. Manager shall be entitled to issue such invoice up to thirty (30) days prior to any date on which it reasonably expects to incur the expense so invoiced, in which event Owner shall reimburse Manager in advance for such invoiced expenses not later than five (5) days prior to the date on which the Manager reasonably expects to actually incur such expense. In the event that, during the continuance of this Management Agreement, the Owner becomes liable for the payment or reimbursement of any insurance premiums pursuant to this Section 21, such liability shall continue, notwithstanding the expiration of this Management Agreement, until all such insurance premiums are reimbursed by the Owner. Owner shall have the right to purchase directly any and all insurance required under this section 21. If Owner exercises this right it shall so notify Manager and each other party to which notice may otherwise be required to be sent. Manager's obligations hereunder shall be deemed to have been performed to the extent actually performed by the Owner pursuant to this paragraph.

22. Recording; Expenses. Prior to the delivery and acceptance hereunder of any Unit, the Manager will cause this Management Agreement to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and the Equipment to be duly registered in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. The Manager will also cause any Management Agreement Assignment during the term hereof to be so filed and recorded. The Manager will from time to time, do and perform any other act

and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Owner for the purpose of proper protection, to the satisfaction of Owner of the Owner's title to the Equipment or for the purpose of carrying out the intention of this Management Agreement. The Manager will promptly furnish to the Owner evidences of all such filing, registering, recording, depositing, refiling, reregistering, rerecording and/or redepositing, and an opinion or opinions of counsel for the Manager with respect thereto satisfactory to the Owner.

Promptly upon request therefor from Manager, Owner shall reimburse Manager for all out-of-pocket expenses incurred by Manager in connection with the filing and recording of this Management Agreement, any Management Agreement Assignment, such other instruments and documents as are required to be prepared, filed, recorded, rerecorded, deposited or redeposited, and the reasonable fees of legal counsel incurred pursuant to this Section 22. In the event that, during the continuance of this Management Agreement, the Owner becomes liable for the payment or reimbursement of any recording expenses incurred by Manager pursuant to this Section 22, such liability shall continue, notwithstanding the expiration of this Management Agreement, until such expenses are reimbursed by the Owner.

23. Interest on Overdue Payments. Anything to the contrary herein contained notwithstanding, any nonpayment of amounts and other obligations due hereunder shall result in the obligation on the part of the Manager promptly to pay also, to the extent legally enforceable, an amount equal to 12% per annum of the overdue amounts for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

24. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, addressed as follows:

if to the Owner:

Hillman Manufacturing Company  
P.O. Box 510  
Brownsville, Pennsylvania 15417  
Attention: Secretary

with copies to:

The Provident Bank, Agent  
One East Fourth Street  
Cincinnati, Ohio 45202  
Attention: J. Lynn Brewbaker

and

Messrs. Keating, Muething & Klekamp  
1800 Provident Tower  
One East Fourth Street  
Cincinnati, Ohio 45202  
Attention: J. David Rosenberg

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if to the Manager:

Detroit and Mackinac Railway Company  
120 Oak Street  
Tawas City, Michigan 48763  
Attention: Charles A. Pinkerton III

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

25. Right to Perform. If Manager fails to make any payments required by this Management Agreement, or to perform any of its other agreements contained herein, Owner may itself, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payment and Owner's expenses, including (without limitation) reasonable legal fees and expenses in connection therewith and with such performance, shall thereupon be and become payable by Manager to Owner upon demand unless such expenses are of the type which Owner is required to reimburse to Manager upon request as herein elsewhere provided.

If Owner fails to make any payments required under the Conditional Sale Agreement, or to perform any of its other agreements contained therein, Manager may itself, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payment and Manager's expenses, including (without limitation) reasonable legal fees and expenses in connection therewith and with such performance, shall thereupon be and become payable by Owner (but only out of the monies then or thereafter distributable to the Owner by the Agent under the Finance Agreement) to Manager upon demand unless such expenses are of the type which Manager is required to incur without reimbursement therefor pursuant to any other Section of this Management Agreement.

26. Conditions to Owner's Obligations. Owner shall not be obligated hereunder unless on or before, but no more than five (5) days before, each Closing Date of Units under the Conditional Sale Agreement;

(i) all of Manager's representations and warranties in Section 18 of this Management Agreement shall be true and correct as though made as of such date;

(ii) no litigation or governmental proceedings shall be threatened or pending against Manager or any subsidiary which in Owner's reasonable opinion will to a material extent adversely affect the ability of Manager to perform its obligations hereunder;

(iii) no Event of Default, or event which might mature into an Event of Default, shall have occurred or be continuing hereunder;

(iv) Manager shall have furnished to Owner, in form and substance satisfactory to Owner, the following on or prior to such date hereunder:

(A) resolutions of the Board of Directors of Manager, certified by its Secretary or an Assistant Secretary, authorizing the management of such Equipment hereunder and the execution, delivery and performance by Manager of this Management Agreement;

(B) a favorable opinion of counsel for the Manager or special ICC counsel, acceptable to Owner, dated such date to the effect that:

(1) Manager is a corporation duly organized and existing in good standing under the laws of the State of Michigan;

(2) Manager is duly authorized to execute and deliver this Management Agreement, and is duly authorized to lease Equipment hereunder and to perform its obligations hereunder;

(3) the execution and delivery of this Management Agreement by Manager, and the performance by Manager of its obligations hereunder and thereunder, do not and will not conflict with any provision of law or of the charter or by-laws of Manager or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Manager or to which Manager is a party;

(4) the execution, delivery and performance of this Management Agreement by Manager and the consummation by Manager of the transactions contemplated hereby and thereby do not require the consent, approval or authorization of, or notice to, any federal or state governmental authority or public regulatory body;

(5) this Management Agreement is a legal, valid and binding obligation of

Manager enforceable in accordance with its terms (except as may be affected by bankruptcy, reorganization, insolvency and similar laws affecting the rights of creditors generally);

(6) there are not to the knowledge of such counsel any pending or threatened actions or proceedings before any court or administrative agency which will, in the opinion of such counsel, to a material extent adversely affect the financial condition or continued operation of Manager and its subsidiaries on a consolidated basis;

(7) this Management Agreement has been duly filed and recorded with the ICC pursuant to Section 20c of the Interstate Commerce Act, such filing and recording will protect Owner's interests in and to the Units of Equipment, and no further filing or recording (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of Owner in and to the Units;

(8) to the effect set forth in subparagraph (h) of Section 18 hereof and as to such other matters as Owner shall reasonably request.

(C) an invoice covering the Units of Equipment for which such payment is requested;

(D) a Certificate of Acceptance of Manager covering the Units of Equipment for which such payment is requested.

(E) evidence that the insurance required pursuant to Section 21 hereof is in full force and effect.

27. Severability; Effect and Modification of Management Agreement; Owner. Any provision of this Management Agreement which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Management Agreement exclusively and completely states the rights of the Owner and the Manager with respect to the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Management Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Owner and the Manager.

Whenever the term "Owner" is used in this Management Agreement, it shall mean Hillman Manufacturing Company, and any assignee, in whole or in part, of Owner's rights hereunder, including any Secured Party.

28. Execution. This Management Agreement may be executed in several counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Agent, shall be deemed the original counterpart and all other counterparts shall be deemed duplicates thereof. Although for convenience, this Management Agreement is dated as of the date first above set forth, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

29. Law Governing. The terms of this Management Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, registering, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, registered, recorded or deposited and any rights arising out of the marking on the Units.

The parties hereto (a) designate the United States District Court for the Southern District of Ohio, Western Division, as a forum where any and all matters pertaining to this Agreement may be adjudicated, and (b) by the foregoing designation, consent to the jurisdiction and venue of such Court for the purpose of adjudicating any and all matters pertaining to this Agreement. Each party hereto not having an agent for service of process of record with the Secretary of State of the State of Ohio hereby irrevocably appoints the

Secretary of State of the State of Ohio as the agent for service of process in any proceeding instituted hereunder and each party hereto agrees that service of process upon such agent, in accordance with the then-prevailing and applicable law as hereinabove agreed to, with a copy of such summons or other instrument mailed to such party by United States Registered Mail at the address specified in Section 24 hereof, shall, upon receipt by such party, constitute proper service on such party for all purposes without objections of any kind whatsoever. Notwithstanding the provisions of this paragraph, any party hereto shall also be entitled to institute legal proceedings to adjudicate matters pertaining to this Agreement against the other in any other competent court.

30. Miscellaneous. This Management Agreement and the Exhibits hereto shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

It is expressly understood and agreed that this Management Agreement does not constitute any joint venture or partnership and the parties hereto agree to execute such other instruments and take such other actions as may be reasonably requested by either party hereto to evidence the foregoing intention.

This Management Agreement and the Schedules hereto, each of which are made a part hereof by this reference thereto, contain the entire understanding and agreement between the parties upon the subject matter of this Management Agreement and, except as otherwise provided herein, may be changed only by written amendment signed by Manager and Owner. Any prior understandings and agreements between the parties are merged herein except only as otherwise expressly stated.

The Index and Article headings set forth herein are for convenience and reference only and are not intended to modify, limit, describe or affect in any way the contents, scope, intent or interpretation of this Management Agreement.

31. Default Under Conditional Sale Agreement. Notwithstanding the absence of any Event of Default by the Manager, hereunder, and so long as the Management Agreement Assignment shall be in effect, if

(i) all the Owner's right, title and interest in and to the Equipment shall have terminated pursuant to Article 16 of the Conditional Sale Agreement following a Declaration of Default hereunder,

(ii) and the Agent shall not have received or accepted an offer to purchase the Equipment from the Manager

pursuant to the last paragraph of Article 16 of the Conditional Sale Agreement, then the Agent shall, upon notice to the Manager, either

(a) terminate this Management Agreement as of the date on which the Owner's right, title and interest in and to the Equipment terminated under the Conditional Sale Agreement, or

(b) assume all the obligations of the Owner under this Management Agreement.

In the event the Agent assumes this Management Agreement and the obligations of the Owner hereunder pursuant to the foregoing sentence, the Owner shall be released of all its obligations to the Manager becoming due after the date of such assumption and the Management Agreement shall continue in full force and effect from the date of such assumption as if the Agent were named "Owner" herein.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

HILLMAN MANUFACTURING COMPANY

BY: Steven N. Hutchinson  
Steven N. Hutchinson, Vice President

WITNESS:

H. Vaughan Blaxter III  
H. Vaughan Blaxter III

DETROIT & MACKINAC RAILWAY COMPANY

BY: Charles A. Pinkerton III  
Charles A. Pinkerton III,  
Vice President

WITNESS:

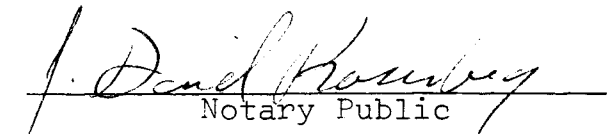
Keith R. Gollust  
Keith Gollust



STATE OF OHIO            )  
                              : SS:  
COUNTY OF HAMILTON    )

BE IT REMEMBERED, That on the 31st day of October, 1978, before me, the subscriber, a Notary Public in and for said County and State, personally appeared STEVEN N. HUTCHINSON, VP of Hillman Manufacturing Company, the corporation whose name is subscribed to and which executed the foregoing instrument, and for himself and as such officer, and for and on behalf of said corporation, acknowledged that he did execute said instrument on behalf of said corporation, and that the signing and execution of said instrument is his free and voluntary act and deed, his free act and deed as such officer, and the free and voluntary act and deed of said corporation for the uses and purposes mentioned in said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year aforesaid.


  
Notary Public

J. DAVID ROSENBERG, Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration date  
Section 147.03 O. R. C.

STATE OF OHIO            )  
                              : SS:  
COUNTY OF HAMILTON    )

BE IT REMEMBERED, That on the 31st day of October, 1978, before me, the subscriber, a Notary Public in and for said County and State, personally appeared CHARLES A. PINKERTON, III, of Detroit & Mackinac Railway Company, the corporation whose name is subscribed to and which executed the foregoing instrument, and for himself and as such officer, and for and on behalf of said corporation, acknowledged that he did execute said instrument on behalf of said corporation, and that the signing and execution of said instrument is his free and voluntary act and deed, his free act and deed as such officer, and the free and voluntary act and deed of said corporation for the uses and purposes mentioned in said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year aforesaid.

  
Notary Public

J. DAVID ROSENBERG, Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration date  
Section 147.03 O. R. C.

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SCHEDULE A

TO

MANAGEMENT AGREEMENT

<u>Specifications</u>	<u>Maximum Quantity</u>	<u>Manager's Road Numbers (Both In- clusive)</u>	<u>Unit</u>	<u>Base Price</u> <u>Aggregate</u>
70 Ton, 50'-6" General Purpose Boxcars	250	DM 10001- 10250	\$33,300	\$8,325,000

Delivery

November -  
December, 1978  
at Builder's  
Plant

SCHEDULE B

TO

MANAGEMENT AGREEMENT

Examples of Determination of Incentive Management Fee  
under Section 6 of Management Agreement

With respect to each example below assume:

- (1) 100% Utilization Revenue = \$2,000,000 for which the determination is being made
- (2) Fixed Expenses = \$1,400,000 for period for which the determination is being made

Example 1: Actual revenue received by Owner pursuant to Section 5 for period for which determination is being made = \$1,800,000

Utilization = \$1,800,000 divided by \$2,000,000 = 90%  
Since Utilization is greater than 85%, Incentive Management Fee =  $1/2 (1,800,000 - 1,400,000) = \$200,000$

Example 2: Actual revenue received by Owner pursuant to Section 5 for period for which determination is being made = \$1,600,000

Utilization = \$1,600,000 divided by \$2,000,000 = 80%  
Since Utilization is less than 85%, Incentive Management Fee =  $\$1,600,000 - 1/2 (\$1,700,000 + \$1,400,000) = \$50,000$

Example 3: Actual Revenue received by Owner pursuant to Section 5 for period for which determination is being made = \$1,500,000

Utilization = \$1,500,000 divided by \$2,000,000 = 75%  
Since Utilization is less than 85%, Incentive Management Fee =  $\$1,500,000 - 1/2 (\$1,700,000 + \$1,400,000) = -\$50,000$ . Since this produces a negative number, no Incentive Management Fee is payable.